

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5140 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAVAISINGH SUGANSINGH CHAUHAN

Versus

R K VASHISHITH

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Appearance:

MR JR NANAVATI for Petitioner

MR HL JANI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, an armed constable in 'C' Company, S.R.P. Gr.II at Saijpur Bogha, filed this petition before this Court and a prayer has been made therein for issuing a Writ of Certiorari and/or a Writ, Order or direction in the nature of Certiorari setting aside the order of dismissal dated 19th August 1983.

2. Under the aforesaid order, the petitioner was dismissed from services by the respondent after holding full-fledged inquiry. The petitioner has not filed a copy of this order in this Special Civil Application. The petitioner, in this Special Civil Application, at para-24, mentioned that the order of dismissal is not served upon him. Reply to this petition has been filed by the respondent in the year 1983 and the petitioner has not filed any rejoinder thereof. The averments made in the reply therefore stand uncontroverted. The respondent, in para-3 of the reply, has come up with the case that efforts were made to serve on the petitioner, the order of dismissal together with the inquiry report, but the petitioner made himself unavailable and therefore since he was not available at his residence, the order of dismissal was pasted at his residence on the entrance. It has further been stated in the reply that a copy of inquiry report including a copy of the order of dismissal was personally handed over to the advocate of the petitioner, Shri J.R. Nanavati. Shri Nanavati, admits that a copy of the order of dismissal and inquiry report have been given to him. In para-4 of reply, the respondent has made a statement that against the order of dismissal the petitioner has a right of appeal and as such, the petition is premature. A plea has been taken that in view of availability of statutory alternative remedy under the Rules, this Court should refuse to entertain the petition.

3. The learned counsel for the petitioner though made twofold submissions on merits that the petitioner has not been given any assistance during inquiry and secondly the inquiry report was not given to the petitioner, I do not consider it appropriate to go on the merits of the case as in my view this petition deserves to be dismissed only on the ground that the petitioner has not filed the impugned order, i.e. the order of dismissal and secondly the petitioner has a right of appeal which he has not availed of though objection has been taken in this respect.

4. The petitioner has prayed for quashing of order of dismissal and unless a copy of that order is filed, what this Court has to quash. It is a writ of Certiorari and otherwise also, the impugned order has to be produced by the petitioner. In absence of the impugned order, it is difficult to see the grounds which have been given by the respondent to dismiss the services of the petitioner. In absence of that order, how the petitioner is justified to make any submission and how can he point out any illegality in the said order. It is really shocking that

the petitioner has, without receiving copy of that order, filed a petition and raised objections. It has deliberately been done as the petitioner wanted to take stay order from this Court. The petitioner have taken this course to avoid filing of the appeal but where statutory right of appeal is available, the petitioner cannot be allowed or permitted to circumvent that right at his own desire and designs. No explanation whatsoever has been given for not availing the right of appeal which has been given to the petitioner against the order of dismissal. The Supreme Court, in the case of Surendra Singh v. Central Government & Ors., reported in AIR 1986 SC 2166 has held that the order impugned in the Special Civil Application has to be filed. In absence of the order impugned, the petitioner is otherwise not maintainable. This petition is also not maintainable on another ground of availability of alternative remedy. Last but not least, this writ petition deserves to be dismissed on another ground that the petitioner has deliberately concealed important material facts from this Court. The petitioner has not only concealed the important fact, but he deliberately made a false statement that the order of dismissal is not served upon him. It is a case where the petitioner has, on the other hand, made himself unavailable for the service of order. The said order has been sent to his residence and when he was not available the same has been pasted at his residence, the only course and the method available to the respondent. The averments in the reply have not been controverted. From the averment made in the amendment, it is clear that the petitioner was in occupation of Room No.24 in Block No.8 which was allotted to him and he was in occupation thereof till 14th October 1983. This writ petition otherwise also deserves dismissal on the ground that the petitioner made a false statement before this Court.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. No order as to costs.

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(sunil)